Filed 8/22/19 In re A.C. CA6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re A.C., a Person Coming Under the Juvenile Court Law.	H046016 (Monterey County Super. Ct. No. 18JV000061)
THE PEOPLE, Plaintiff and Respondent, v. A.C., Defendant and Appellant.	

A.C., a 12-year-old minor, appeals from an order of wardship (Welf. & Inst. Code, § 602, subd. (a)) entered after the juvenile court found true the allegations that he made a criminal threat (Pen. Code, § 422, subd. (a))[1] and committed misdemeanor vandalism (§ 594, subd. (b)(2)(A)). The juvenile court adjudicated A.C. a ward of the court for 24 months. It also determined that A.C.'s maximum time of confinement was three years, four months. A.C. contends that there was insufficient evidence to support the adjudications for making criminal threats and vandalism. We affirm the order.

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1 All further statutory references are to the Penal Code.

I. Statement of Facts

A.C. was a student at Community Day Middle School, where there were eight to 10 students. Like other students at the school, A.C. had a behavior plan. This plan was designed to de-escalate situations when A.C. was behaving inappropriately.

Erica Parker, a Community Day Specialist, worked in an administrative capacity at the school. On January 11, 2018, A.C. was brought to Parker's office by his teacher after he engaged in disruptive behavior in the classroom. Parker contacted A.C.'s uncle, who was unable to leave work. He requested that A.C. be given a pass to go home. By the time Parker wrote the pass, A.C. had left her office. A.C. was upset and walking around the campus, which he sometimes did after he became angry. The school contacted Officer Patricia Kimball, a school resource officer for the Seaside Police Department. When she arrived at the school, she was directed to A.C.'s location. As she was following A.C., she saw him punch the greenhouse and damage one of the plastic panels.[2] A.C. was cited for vandalism.

Prior to the January 11, 2018 incident, A.C. tried to go to an area where he could "go up fences." Parker said, "Please, do not go there," and blocked him. A.C. responded, "Don't come near me. If you touch me, I will punch your face." Parker "gave him his space" and left. She called David Diehl, the vice principal, and told him, "I do not want to be around him any longer because I do not want to aggravate him. Can you please come and take over the situation." He agreed and asked Parker to call law enforcement. Law enforcement eventually contacted A.C. at the park. Parker had also received information from the teacher that A.C. had said that he "was going to bring a gun . . . ."[3]

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[2] Exhibits 1, 2, and 3 depict the damage that A.C. caused when he punched the greenhouse.

[3] According to Parker, A.C. is small. She knew that he has been contacted by law enforcement several times, but she was not aware of incidents in which he was found with a weapon.

On January 17, 2018, A.C. was brought to Parker's office. His teacher, Gregory Leiman, told her that A.C. "was going in and out of the cabinets." A.C. was upset and told Leiman, who was standing at the door, to move. After Parker told A.C. to stop, he called her a "fucking bitch," and said, "I fucking hate you." Parker was "astonished" and chuckled, and then said, "Okay." A.C. responded, "You think you can act like this because you work here. If you didn't -- if I saw you in the street, I will kill you, your family and your son."[4] Parker was "shaken up" and feared for her safety. A.C. began "vandalizing [her] office" by opening the cabinets in her office and "throwing everything" on the floor. When Leiman was no longer standing in the doorway, A.C. left her office.

Parker asked that her office be locked, because she knew A.C. was in "a state of mind that he becomes very unpredictable." She also called Diehl for support. Parker did not want A.C. to come close to her or to vandalize more of her belongings or put her or others in danger. When she was asked at the hearing if she still feared A.C., Parker stated that she did "not feel comfortable with him being around [her] now." She did not know if A.C. knew where she lived.

Anthony Sheppard, a community liaison with the school, was also present in Parker's office during the incident. According to Sheppard, A.C. was hostile and angry when he told Parker that he was going to kill her, her baby, and her whole family. On another occasion, Sheppard, Diehl, and Miss Jay were in the office when A.C. was "acting pretty disruptive." A.C. said that "he was going to get an AK-47 and kill [them] all." Sheppard was not afraid of A.C.

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[4] In her written statement, Parker stated that A.C. had said, "Just because you are at school. But if I see you, I will kill you, and your whole family, and your son." When asked if something was missing from her statement, Parker testified that A.C. had said, "Just because you work here you can act like that. But if I would see you -- I don't recall if he said in the street or out of school, I would kill you, and your family, and your son."

About 30 minutes after A.C. left Parker's office, Roger Jones, an instructional assistant at the school, saw A.C. outside on the basketball court. A.C. was pacing around and throwing objects "like disks . . . ." When Jones asked A.C. what was wrong with him, A.C. replied, "I'm just waiting for Miss Erica to come out." Jones asked, "Why are you saying that?" A.C. said, "You should just watch and see." Jones told Parker about A.C.'s behavior and statements later that day. Jones was not afraid of A.C.

Officer Kimball and approximately seven or eight officers responded to the report of threats and spoke to A.C. A.C. told Officer Kimball that he was throwing old items in the classroom. When the officer asked A.C. about what had happened in Parker's office, he stated that he had "told something to Miss Parker about her family." A.C. denied that he had threatened Parker.

Diehl did not remember if A.C. made a statement about bringing an AK-47 to school. Due to all the daily incidents, this statement would not "stick out" in his mind. Diehl spoke with Parker after the January 17 incident. Diehl acknowledged that A.C. had hit students, but he did not know whether he had hit adults. Diehl took the threat "seriously" and felt that A.C. "couldn't be in [their] environment." Diehl explained, "My feeling was that he had gotten to a point and level of maybe brooding in anger. And was clearly at a point where I can see his personality change." A.C. was not suspended, because he was under arrest.

A.C. testified that he "pushed" the greenhouse, because he was frustrated. He was not trying to break it. When he pushed the greenhouse, he did not think it would break because it did not break when balls hit it. He realized that he was going to have to pay for it. He denied ever getting in trouble for talking about guns and he never said anything about an AK-47.

According to A.C., he never threatened to punch Parker. He said that he was going to push her, because she pushed him three or four times out the door towards the gate. He denied ever saying that he was going to kill Parker, her child, and her whole

family. He told Parker, "I hope your family dies." He did not know what else to do. He knew that if he broke or hit something, he would get into trouble and he thought that his statement "would not be as bad." He was not hoping to scare her. He denied pulling items out of her cabinets and throwing them. He was "kind of" trying to make Parker mad when he made the statement. He wanted her to stop talking to him. He would not have said it if he knew that the statement was going to scare her.

II. Discussion

A. Criminal Threat

"In order to prove a violation of section 422, the prosecution must establish all of the following: (1) that the defendant 'willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person,' (2) that the defendant made the threat 'with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out,' (3) that the threat—which may be 'made verbally, in writing, or by means of an electronic communication device'—was 'on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat,' (4) that the threat actually caused the person threatened 'to be in sustained fear for his or her own safety or for his or her immediate family's safety,' and (5) that the threatened person's fear was 'reasonabl[e]' under the circumstances." (*People v. Toledo* (2001) 26 Cal.4th 221, 227-228 (*Toledo*).)

A.C. contends that there was insufficient evidence to support his adjudication for making a criminal threat. He argues that there was insufficient evidence: (1) he specifically intended that his statement be taken as a threat; (2) the words that he used conveyed a gravity of purpose and immediate prospect of execution; and (3) his statement caused Parker to be in sustained fear, and that her fear was reasonable.

1. Standard of Review

Relying on *In re George T.* (2004) 33 Cal.4th 620 (*George T.*), A.C. argues that his speech is constitutionally protected and thus this court should conduct an independent review of the record to determine whether he had the specific intent for his statement to be taken as a threat and whether his statement was "so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat." (§ 422.)

In *George T.*, the minor gave classmates a poem, which included the language: "'For I can be the next kid to bring guns to kill students at school. So parents watch your children cuz I'm BACK!!'" (*George T., supra,* 33 Cal.4th at p. 625.) On appeal, the minor argued that giving his poem to classmates was protected speech under the First Amendment and did not constitute criminal threats. (*Id.* at p. 630.) The California Supreme Court observed that the poem was "ambiguous and plainly equivocal," and "'[r]easonable persons understand musical lyrics and poetic conventions as the figurative expressions which they are . . . .'" (*Id.* at p. 636.) The court concluded that "no compelling reasons exist why independent review should not . . . apply in the unique circumstances presented in this case." (*Id.* at p. 634.) The court held that "a reviewing court should make an independent examination of the record in a section 422 case when a defendant raises a plausible First Amendment defense to ensure that a speaker's free speech rights have not been infringed by a trier of fact's determination the communication at issue constitutes a criminal threat." (*Id.* at p. 632.)

The case before us does not involve the "unique circumstances" present in *George T.* A.C. did not make his statement as part of a literary effort or class assignment or any context suggesting "a plausible First Amendment defense . . . ." (*George T., supra,* 33 Cal.4th at p. 632.) A.C. stated directly to Parker that he would kill her, her family, and her son. "'When a reasonable person would foresee that the context and import of the words will cause the listener to believe he or she will be subjected to

physical violence, the threat falls outside First Amendment protection.'" (*Toldeo, supra*, 26 Cal.4th at p. 233, italics omitted, quoting *In re M.S.* (1995) 10 Cal.4th 698, 710.) Accordingly, we apply the substantial evidence standard of review.

Under the substantial evidence standard, "'"an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find [the elements of the crime] beyond a reasonable doubt."' [Citations.] '"'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.'"' [Citations.]" (*George T., supra*, 33 Cal.4th at pp. 630-631.)

2. Specific Intent

A.C. contends that there was insufficient evidence that he had the specific intent to have his statement be taken as a threat.

"'[T]he determination whether a defendant intended his words to be taken as a threat . . . can be based on all the surrounding circumstances and not just on the words alone. The parties' history can also be considered as one of the relevant circumstances.'" (*People v. Butler* (2000) 85 Cal.App.4th 745, 754 (*Butler*).)

Here, A.C. directly confronted Parker. He called her a "fucking bitch," and said, "I hate you." He was hostile and angry, and said, "You think you can act like this because you work here. If you didn't -- if I saw you in the street, I will kill you, your family and your son." A.C. then opened the cabinets in Parker's office, threw the contents on the floor, and exited the office. Shortly thereafter, Jones saw A.C. pacing around outside and throwing objects. When Jones asked A.C. what was wrong, A.C. replied that he was waiting for Parker to come outside. Jones asked, "Why are you saying that?" A.C. told him, "You should just watch and see." When reprimanded by Parker on another occasion, A.C. had also said to her, "If you touch me, I will punch your

face." Thus, A.C.'s statements, hostile and angry demeanor, conduct in throwing objects on the floor, subsequent belligerent warning to Jones, and prior threatening statement to Parker constituted substantial evidence that A.C. made his statement with the specific intent that it be taken as a threat.

A.C. argues that the surrounding circumstances demonstrate that he "said the words because he was upset, wanted her to stop talking to him, and did not know what else to do." A.C.'s argument is based almost entirely on his own testimony, but the juvenile court impliedly rejected this testimony. (*People v. Woods* (1999) 21 Cal.4th 668, 673.) Moreover, A.C. fails to explain why, if he was upset and wanted Parker to stop talking to him, he paced outside her office and waited to confront her. A reasonable interpretation of his statements and behavior was that he intended to scare her.

To support his position, A.C. also relies on *People v. Wilson* (2010) 186 Cal.App.4th 789 (*Wilson*) and *People v. Gudger* (1994) 29 Cal.App.4th 310 (*Gudger*) in which the surrounding circumstances were different from the present case. In *Wilson,* the reviewing court concluded that the defendant "made the threat with the specific intent that his statements would be taken as threats—defendant repeatedly said that he had previously killed officers, that was what he did, he would find people, he had done it before, he would do it again, and he would find Thornberry and blast him." (*Wilson,* at p. 814.) The defendant also made deliberate eye contact with the officer and made a gesture of shooting a gun with his hand, though A.C. acknowledges that the reviewing court did not rely on those facts. (*Id.* at pp. 798, 814.)

In *Gudger*, the defendant argued that there was insufficient evidence to support her conviction for threatening the life of a judge under section 76. (*Gudger, supra,* 29 Cal.App.4th at p. 313.) Under that statute, the defendant must have "the specific intent that the statement is to be taken as a threat . . . ." (*Id.* at p. 320.) The defendant, who was unhappy with the judge in her case, twice called the presiding judge to ask that her case be assigned to another judge. During the calls, the defendant threatened to buy a gun and

shoot the judge who was deciding her case and referred to a shooting by a postal employee. (*Id.* at pp. 314-315.) The *Gudger* court held that the defendant's "repeated threats and the circumstances which revealed her disgruntled and agitated state at the time of the threats, as well as her specific and well-focused pique" with the judge constituted substantial evidence that she intended her statements to be taken as threats. (*Id.* at p. 321.)

A.C. argues that since he did not repeat his statement, make any threatening gestures, refer to a violent incident in the news, or make meaningful eye contact with Parker, the circumstances surrounding his statement do not support the conclusion that he intended to make Parker feel afraid. However, the *Wilson* and *Gudger* courts did not suggest, let alone hold, that the circumstances present in those cases were required to support the specific intent element of a section 422 conviction. Each case must be decided on its own unique facts. Accordingly, we reject A.C.'s argument.

A.C. next contends that "the only reasonable conclusion" about his threat was that he "was expressing his own feelings of frustration and anger." However, A.C.'s feelings and his specific intent are not mutually exclusive. Though there were other adults in the office, A.C. directed his anger at Parker when he threatened to kill her, her family, and her son. That he focused on Parker indicates that he was not expressing generic feelings of frustration and anger. A.C. also claims that his consideration of alternative ways of expressing his feelings by throwing or hitting something show that he was not focused on Parker. There is no merit to this claim. A.C. emptied the cabinets in her office and threw the contents on the floor. In addition, his threatening behavior continued when he waited for her on the basketball court.

3. Threat Conveying a Gravity of Purpose and Immediate Prospect of Execution

Section 422 requires the threat "on its face and under the circumstances in which it is made," to be "so unequivocal, unconditional, immediate, and specific as to convey to

the person threatened, a gravity of purpose and an immediate prospect of execution of the threat. . . ." A.C. contends the evidence does not support this element.

"'The use of the word "so" indicates that unequivocality, unconditionality, immediacy and specificity are not absolutely mandated, but must be sufficiently present in the threat and surrounding circumstances to convey gravity of purpose and immediate prospect of execution to the victim.' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 340.) "'The parties' history can also be considered as one of the relevant circumstances. [Citations.]'" (*People v. Smith* (2009) 178 Cal.App.4th 475, 480.)

Here, A.C. preceded his threat with hostile and angry statements. After vandalizing Parker's office, he waited for her outside. He had also previously hit students and changed from threatening to punch Parker's face to killing her and her family. Thus, there was sufficient evidence based on A.C.'s statements, the circumstances surrounding his statements, and his history with Parker to convey a gravity of purpose by A.C. and an immediate prospect of executing the threat.

A.C. argues, however, that his words were not directing "Parker to do or to avoid doing anything. Rather, his words were ambiguous and equivocal." A.C. said, "You think you can act like this because you work here. If you didn't -- if I saw you in the street, I will kill you, your family and your son." Thus, A.C. began by criticizing her behavior as a school employee, but then changed his statement to specifying that "if" he saw her on the street, he would kill her, her family, and her son. Though A.C. arguably conditioned his threat, he neverthless conveyed to Parker "a gravity of purpose and an immediate prospect of execution" of threat because Parker would eventually leave the school campus that day.

A.C. also argues that his statement "conveyed that he was having a raw emotional outburst." "Section 422 was not enacted to punish emotional outbursts, it targets only those who try to instill fear in others. [Citation.]" (*People v. Felix* (2001) 92 Cal.App.4th 905, 913 (*Felix*).) The statute "is not violated by mere angry utterances or

ranting soliloquies, however violent." (*People v. Teal* (1998) 61 Cal.App.4th 277, 281 (*Teal*).) A.C. overlooks that he directed his threat to Parker and not to any of the other adults in her office. The language he chose was also not designed to merely express anger. He was trying to instill fear, particularly by referring to killing her son.

A.C.'s reliance on *Felix, supra*, 92 Cal.App.4th 905 and *Teal*, *supra*, 61 Cal.App.4th 277 is misplaced. In *Felix*, the defendant told a jail psychologist during a therapy session that he was going to kill his former girlfriend. (*Felix*, at pp. 908-909.) The reviewing court held that there was insufficient evidence that the defendant intended that his threats be conveyed to the victim. (*Id.* at p. 913.) In *Teal*, the defendant argued that he did not see the victim or know that he was home and could hear his threats. (*Teal, supra*, 61 Cal.App.4th at p. 281.) The reviewing court concluded that "if one broadcasts a threat intending to induce sustained fear, section 422 is violated if the threat is received and induces sustained fear—whether or not the threatener knows his threat has hit its mark." (*Ibid.*) In contrast to *Felix* and *Teal*, here, A.C. spoke directly to Parker.

A.C. claims that the present case involves the same circumstances that were present in *In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1140 (*Ricky T.*). In that case, a teacher accidentally hit the minor with a door when he opened it. The minor became angry and said either "'I'm going to get you'" or "'I'm going to kick your ass.'" (*Id.* at pp. 1135-1136.) The teacher sent the minor to the school office. The police were not contacted until the following day and the minor was interviewed. The police conducted a second interview a week later. (*Ibid.*) The reviewing court held that the threat did not convey sufficient gravity or immediate prospect of execution to satisfy section 422. (*Ricky T.*, at pp. 1137-1139.)

There are several differences between *Ricky T.* and the case before us. Here, as A.C. acknowledges, his conduct after making the threat increased its gravity and the

police were contacted more quickly.[5] In addition, "there was no evidence . . . to suggest" in *Ricky T.* that the minor and the teacher "had any prior history of disagreements, or that either had previously . . . addressed . . . hostile . . . remarks to the other. [Citations.]" (*Ricky T., supra,* 87 Cal.App.4th at p. 1138.) Here, A.C. had previously threatened Parker and made hostile remarks to her. In *Ricky T.,* there was no evidence that the minor "exhibited a physical show of force, displayed his fists, damaged any property, or attempted to batter [the teacher] or anyone else" (*ibid.*), while A.C. threw everything out of Parker's office cabinets after threatening her. Moreover, the reviewing court in *Ricky T.* characterized the minor's "remark 'I'm going to get you'" as "ambiguous on its face and no more than a vague threat of retaliation without prospect of execution. [Citation.]" (*Ibid.*) A.C.'s threat to kill Parker, her family, and her son was not ambiguous. *Ricky T.* is readily distinguishable from the present case.

A.C. relies on cases in which the reviewing courts found substantial evidence to support section 422 convictions: *People v. Mendoza* (1997) 59 Cal.App.4th 1333, *People v. Gaut* (2002) 95 Cal.App.4th 1425, *In re David L.* (1991) 234 Cal.App.3d 1655, and *Butler, supra,* 85 Cal.App.4th 745. He argues that in contrast to those cases, he "was not a member of a street gang and did not have a history of assaulting Ms. Parker," did not "surround his victim with friends," did not make "clicking sounds to simulate a gun," "did not grab Ms. Parker," and "did not send a car full of gang members to intimidate" her. However, as previously stated, each case must be decided on its own facts, and the cases cited by defendant do not convince us that, as a matter of law, A.C.'s threat did not

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[5] A.C. states that when he was waiting for Parker on the basketball court after he threatened her, he "might have been waiting to apologize or just talk with this staff member who had helped him calm down in the past." He also claims that the police response to the threat "might have been related to the fact that Ms. Parker was married to a police officer and not much of an indication of how serious the school was taking the threat." There is no evidence in the record to support this speculation.

convey "a gravity of purpose and an immediate prospect of execution" to Parker. (§ 422.)

4. Reasonably in Sustained Fear

Section 422 requires the victim "reasonably to be in sustained fear for his or her own safety . . . ." This element "has a subjective and an objective component." (*Ricky T.*, *supra*, 87 Cal.App.4th at p. 1140.) "A victim must actually be in sustained fear, and the sustained fear must also be reasonable under the circumstances." (*Ibid.*) Courts have defined the term "sustained fear" as a period of fear "that extends beyond what is momentary, fleeting, or transitory." (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156 (*Allen*); *People v. Fierro* (2010) 180 Cal.App.4th 1342, 1349.) In addition, "[t]he victim's knowledge of defendant's prior conduct is relevant in establishing that the victim was in a state of sustained fear. [Citation.]" (*Allen*, at p.1156.)

A.C. argues that there was insufficient evidence that his threat actually and reasonably caused Parker to be in sustained fear. We disagree.

Here, there is no merit to A.C.'s claim that Parker did not describe her fear and testified only that "she was 'shaken up' and later felt uncomfortable around A.C." A.C. had previously threatened to punch Parker, and his latest statement involved killing her and her family. Though Parker testified that she was "shaken up," she also testified that she feared for her safety. She continued to be fearful after A.C. left her office. She asked that it be locked, because she knew A.C. "was at a state of mind that he becomes very unpredictable of what his actions will become" and she did not want "to give him that opportunity" of "having access to come close to" her. Moreover, shortly after the incident, Parker learned from Jones that A.C. was pacing, waiting for her, and when asked why he was waiting, A.C. told Jones to "just watch and see." This information made Parker feel that A.C. had a "grudge towards [her] personally." When asked if she was still in fear at the time of the hearing, Parker testified that she did "not feel comfortable with him being around [her]" any longer. Parker explained, "I do not know

where he is coming from. I do not know where his state of mind is. To him really know [*sic*] his right from wrong, I do not have any insurance that he's not going to do anything. [¶] So I am concerned of his well being around our school, our students and myself." Thus, there was substantial evidence that Parker's fear was not "momentary, fleeting, or transitory." (*Allen, supra*, 33 Cal.App.4th at p. 1156.)

A.C. also argues that there was insufficient evidence that his statement would cause a reasonable person to be in sustained fear. He points out that he is small and there was no evidence that he had access to a weapon or ever brought a weapon to school.

People v. Orloff (2016) 2 Cal.App.5th 947 considered a similar argument. In *Orloff*, the defendant phoned the victim and said, "'You're dead,'" and the victim knew that the defendant was disabled and used a wheelchair. (*Id.* at p. 952.) The reviewing court held that a reasonable trier of fact could find that the victim's "fear for his safety 'was "reasonabl[e]" under the circumstances.' [Citation.] [The victim] reasonably believed that, despite [the defendant's] disability, he could carry and fire a gun." (*Id.* at p. 953.) There was no evidence in that case that the defendant had access to guns or had previously used a gun.

Here, Parker was informed by his teacher that A.C. had threatened to bring a gun to school. Sheppard was also present when A.C. made a threat to get an AK-47 and "kill [them] all." A.C.'s size would be irrelevant if he used a gun. Moreover, A.C.'s inability to manage his anger, his previous threats, and his unpredictability could cause a reasonable person to be in sustained fear even if that person did not know whether A.C. had access to a weapon or had brought one to school.

A.C. also points out that other school employees testified that they were not afraid of him. Though Jones and Sheppard testified that they were not afraid of A.C., Diehl testified that he did not "know if 'afraid' was the right word." Diehl explained that he was "[c]oncerned at times . . . for the safety of people" and noted that A.C. had hit other students. Diehl also "wasn't sure" whether A.C. might physically harm someone. He

further described his impression of A.C.: "My feeling was that he had gotten to a point and level of maybe brooding in anger. And was clearly at a point where I can see his personality change. [¶] To where he can go from having a nice conversation about the latest video game, or what's going on, to extreme profanity. A whole different demeanor that starts to take place. [¶] And based on that, my experience with him, I wouldn't have allowed him at the campus." Jones also testified that A.C. became agitated very quickly and was unpredictable. Thus, there was substantial evidence that A.C.'s statement would cause a reasonable person to be in sustained fear.

B. Vandalism

A.C. contends that there was insufficient evidence to support the vandalism count, because there was no evidence that he damaged the greenhouse.

A person who maliciously defaces with graffiti or other inscribed material, damages, or destroys any real or personal property that is not his or her own, has committed vandalism. (§ 594, subd. (a).) If the amount of the defacement, damage, or destruction is less than $400, the offense is a misdemeanor. (§ 594, subd. (b)(2)(A).)

We review the evidence "'"in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find [the elements of the crime] beyond a reasonable doubt."' [Citations.]" (*George T.*, *supra*, 33 Cal.4th at pp. 630-631.)

Here, Officer Kimball stated that A.C. "vandalized the greenhouse by punching it." During the officer's testimony, the prosecutor showed her three photographs of the greenhouse, which had been taken on the day of the incident. Officer Kimball stated that the first photograph depicted the damage that A.C. caused to the greenhouse. When asked what damage she saw, she stated that "[o]ne of the plastic panels was damaged." According to Officer Kimball, the photographs were accurate representations of the damage. During his testimony, A.C. admitted that he "pushed" the greenhouse. Defense

counsel asked A.C., "And when you realized that you had *broken* the greenhouse, how did you feel?" and "Did you feel good or bad about the greenhouse *breaking*?" (Italics added.) A.C. replied, that he felt "confused" and "bad." A.C. explained that he said to himself at the time, "Oh, I'm going to have to pay for this."[6]

In re Nicholas Y. (2000) 85 Cal.App.4th 941 (*Nicholas Y.*) is instructive. In that case, the minor wrote on a glass window of a movie theater projection booth with a marker. (*Id.* at p. 942.) On appeal, the minor contended that there was insufficient evidence to prove he violated section 594. (*Nicholas Y.*, at p. 942.) At the hearing, the minor's counsel had argued that there was no evidence of defacement or damage to the property, stating that "'[i]t's a piece of glass with a marker on it. You take a rag and wipe it off. End of case. It's ridiculous.'" (*Id.* at p. 943.) Citing to the dictionary definition of the word, the reviewing court reasoned that defacement did "not incorporate an element of permanence." (*Id.* at p. 944.) Thus, the court held that there was substantial evidence that the minor violated section 594. (*Nicholas Y.*, at p. 944.)

Here, A.C. punched out one of the plastic panels of the greenhouse. A greenhouse is "a structure with walls and roof made chiefly of . . . translucent plastic in which plants requiring regulated climatic conditions are grown." (Oxford English Dict. Online (2019) <https://www.oed.com/view/Entry/81202> (as of August 22, 2019, archived at <https://perma.cc/GHK2-KGCD>.) Damage is defined as "physical injury to a thing, such as impairs its value or usefulness." (Oxford English Dict. Online, *supra*, (2019) <https://www.oed.com/view/Entry/47005> (as of August 22, 2019, archived at <https://perma.cc/8AFS-PDGG>.) In punching the panel out of its position in the

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[6] A.C. argues that references in the testimony to the greenhouse being broken were in response to questions by the prosecutor and that nothing an attorney says is evidence. The questions were posed by A.C.'s counsel and provide context for A.C.'s response.

greenhouse, the structure could no longer function as intended. Thus, A.C. impaired its value and usefulness, and damaged it.[7]

A.C.'s reliance on *In re Kyle T.* (2017) 9 Cal.App.5th 707 is misplaced. In *Kyle T.*, a police officer testified that "'[a]ccording to the graffiti removal cost list, it is $400 for each incident of removing graffiti'" and a total of $1,200 for the three incidents. (*Id.* at p. 711.) The reviewing court held that there was insufficient evidence to support the juvenile court's finding that the minor had committed felony vandalism, since the prosecutor failed to produce evidence that the actual cost to repair the property damage reached the $400 threshold. (*Id.* at pp. 713-715.) The *Kyle T.* court reversed the order and directed the juvenile court to reduce the felony vandalism count to a misdemeanor vandalism count. (*Id.* at p. 717.) In contrast to *Kyle T.*, here, A.C. suffered an adjudication for misdemeanor vandalism in which the amount of damage was less than $400.

III. Disposition

The order is affirmed.

[7] A.C. points out that when the probation officer contacted the vice principal, he said the cost of damage was "minimal, if anything at all," so the school was not seeking restitution. Since the probation report was not introduced as evidence at the hearing, we do not consider it.

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Mihara, Acting P. J.

WE CONCUR:

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Grover, J.

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Danner, J.

People v. A.C.
H046016